Office-Supreme Court, U.S.
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JOHN F. DAVIS, CLERK

IN THE

Supreme Court of the United States

October Term, 1963

No. 609

CHARLES H. RUBY, as President of the AIR LINE PILOTS ASSOCIATION, INTERNATIONAL and AIR LINE PILOTS ASSOCIATION, INTERNATIONAL, an unincorporated association,

Petitioners,

against

AMERICAN AIRLINES, INC.,

Respondent,

and

NICHOLAS J. O'CONNELL, JR., individually and as Chairman of the Master Executive Council of the pilots in the service of AMERICAN AIRLINES, INC., and the Negotiating Committee of said pilots, consisting of RICHARD LYONS, ROBERT T. GUBA, JOSEPH GARVEY, PAUL ATKINS and NICHOLAS J. O'CONNELL, JR., ex officio,

Additional Respondents,

and

JOSEPH V. MANNING, as President of the AMERICAN AIRLINES CHAPTER, FLIGHT ENGINEERS' INTERNATIONAL ASSOCIATION, AFL-CIO, and AMERICAN AIRLINES CHAPTER, FLIGHT ENGINEERS' INTERNATIONAL ASSOCIATION, AFL-CIO, an unincorporated association,

Intervenors.

On Petition for a Writ of Certiorari to the United States Circuit Court of Appeals for the Second Circuit

ADDITIONAL RESPONDENTS' REPLY BRIEF

MARTIN C. SEHAM
Attorney for Additional Respondents
205 West 34th Street
New York 1, New York
(212) LO 5-7265

February 5, 1964

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This brief is submitted by the Additional Respondents in reply to the Petitioners' Reply Brief.

POINT I

The Petition is untimely.

A few facts should clear up the question of the Petition's timeliness:

1. Rule 21(3) of this Court permits a petitioner to rely on the appendices offered in the courts below and further states that the petitioner may file "the entire record in addition."

2. The notice of filing form—Form 75 (8-61-10M)—as filed by the Petitioners, stated that in addition to appendices "A certified copy of the transcript will be filed in the Supreme Court by November 27, 1963."

3. Such a transcript would not constitute the entire record, but would omit scores of exhibits and many evidentiary affidavits. On November 20, 1963, counsel for Respondents called this to the attention of this Court's Clerk and also pointed out that the Petition contained many references to material outside the scope of the appendices.

4. That same day the Clerk informed Petitioners' counsel that they might comply with the Rules *either* by submitting the entire record *or* by resubmitting the Petition with all references to material outside the appendices deleted.* Apparently the Petitioners decided not to revise

* Respondent American Airlines later, by letter dated November 22, 1963, objected to the latter course because it would have required changes to the brief in response which had already been substantially prepared.

their Petition, but chose to proceed with the one already printed. At page 10 of Petitioners' Reply Brief, they state that they then "undertook to accommodate Respondent's requests" for filing the entire record. However, the true reason for securing the full record is stated in a sworn affidavit by Petitioners' counsel dated November 27, 1963. That affidavit was submitted in support of Petitioners' motion to the Court of Appeals for the Second Circuit for release of the record and states:

> "The relief sought on this motion has become necessary *by reason of advice from the Office of the Clerk of the United States Supreme Court that that Court requires the full and complete record* which was before the Court below *for its consideration of Appellants* [sic] *petition for certiorari.*" (Emphasis added.)

5. Rule 34(2) of this Court states:

> "Whenever any justice of this court is empowered by law or under any provision of these rules to extend the time within which a party may petition for a writ of certiorari or file in this court his record on appeal or any brief or paper, an application seeking such extension shall be timely *if it is presented to the clerk within the period sought to be extended.* The clerk will refuse to receive any application for extension sought to be presented after expiration of such period." (Emphasis added.)

The Petitioners have not followed either course suggested by the Clerk for the perfection of their Petition. They have made no motion within the time required for an extension of time within which to perfect their Petition; now such a motion will not lie. If there was any problem for the Petitioners in perfecting their Petition, the solution

was in their hands. They chose to ignore the prescribed procedures.

To this date, 142 days have elapsed since the decision by the Court of Appeals below. We submit the Petition is untimely. The *prospect* and then the pendency of this Petition have been used as grounds in a collateral action in the District of Columbia, *A. L. P. A.* v. *N. M. B.*, No. 18,060, to urge, unsuccessfully, that the D. C. Court of Appeals delay with the Board's certification. We respectfully submit that the Petitioners' failure to comply with the Rules is directly attributable to their precipitous use of the certiorari process as a tool to delay another proceeding. Under such circumstances, we see no grounds for not requiring the Petitioners to comply fully with the requirements of the Rules.

Respectfully submitted,

MARTIN C. SEHAM
Attorney for Additional Respondents
205 West 34th Street
New York 1, New York
(212) LO 5-7265

February 5, 1964

APPENDIX A

OFFICE OF THE CLERK
SUPREME COURT OF THE UNITED STATES
WASHINGTON, D. C., 20543

January 21, 1964

Martin C. Schain, Esquire
205 West 34th Street
New York 1, New York

RE: RUBY, ETC. ET AL., V. AMERICAN AIRLINES, INC., ET AL.
No. 609 October Term, 1963.

Dear Mr. Schain:

I have your letter of January 16th in connection with the distribution of the papers in the above-entitled case.

If you have any formal response you wish to make to petitioners' reply brief, you may forward forty printed copies thereof to this office. I shall withhold the distribution of the papers for two weeks and ascertain at that time the status of the original record.

Very truly yours,

JOHN F. DAVIS, Clerk
By E. P. CULLINAN
E. P. Cullinan
Chief Deputy

EPC:mlg